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Brief

Federal Review of Environmental and Regulatory Processes
Environmental Assessment Processes

Presented to:
Expert Panel for the Review of Environmental Assessment Processes (*CEAA 2012)*

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PRESENTATION OF THE FIRST NATION

The Kitigan Zibi Anishinabeg First Nation community presents these comments in regards to the public consultation on the federal review of recent changes to the *Canadian Environmental Assessment Act*. Kitigan Zibi wishes to affirm that the *Canadian Environmental Assessment Act* region covers ancestral Algonquin Anishinaabe lands that were never surrendered, and for which we have never signed a treaty. We continue to assert our full rights to our land and seek respect from all those that reside in and/or use these lands. These comments are submitted without prejudice to our collective asserted rights. Finally, these comments are not intended to provide an inventory of our Algonquin Anishinaabe values in regards to the targeted territory and should not be used or viewed as our all-encompassing position.

CONTEXT

On 20 June 2016, the federal government decided to embark on a review of environmental and regulatory processes (hereinafter, "the Review"), including an immediate review of "Canada's environmental assessment processes to regain public trust and help get resources to market and introduce new, fair processes." The legislative changes made in 2012 to the *Canadian Environmental Assessment Act* (CEAA) in the context of bill C-38 greatly reduced the proportion of projects subjected to the federal environmental assessment process and limited public participation. The current version of the CEAA, the *Canadian Environmental Assessment Act, 2012,* adopted in the context of bill C-38, is not suited to the realities of the First Nations.

Within the framework of the Review, the government committed to guaranteeing the full-fledged participation of the Aboriginal (First Nations, Inuit, and Métis) peoples and the inclusion of their rights and interests in future processes within the purview of the Review. In the course of its work, the expert panel in charge of the review of the CEAA must ensure that this commitment is honoured. The First Nations inhabit and occupy the territory in a dynamic fashion, and have practiced activities such as hunting, fishing, trapping, and food gathering since time immemorial. In this way, they maintain a specific way of life and a substantial relationship with the territory and its resources. By virtue of their inherent right to self-government, the First Nations possess and continuously exercise the responsibility to control, manage, preserve, and protect their traditional territories. These rights endure and were reaffirmed by section 35 of the *Constitution Act, 1982*.

Recognition and meaningful consideration of these specific rights and interests must be incorporated as a guiding principle of the Review and the recommendations stemming from it. The initial sections of this brief focus on describing the particular rights and interests that are applicable within the framework of the CEAA.

INTRODUCTION

Because of their specific way of life and their substantial relationship with the territory and its resources, First Nations in Quebec and Labrador have a particular relationship to navigation. However, the current version of the *Canadian Environmental Assessment Act (CEAA)* contains several flaws that impede the ability of First Nations to honor this relationship.

The review of the environmental assessment process constitutes an opportunity to make legislative amendments to the Act that will provide recognition and respect for the rights and interests of the First Nations and will allow for a genuine nation-to-nation dialogue between the government and the First Nations.

We welcome with enthusiasm the mandate assigned to the Expert Panel to review the CEAA. In order to provide input to the Panel for guidance in the development of its report, this brief focuses on the main hindrances to meaningful First Nations participation in the process and identifies potential solutions for ensuring that First Nations' rights and interests are genuinely taken into account.

For simplicity, this brief covers the following items in successive sections: First Nations rights, distinctive culture, goals of environmental assessment, planning of environmental assessment, conduct of environmental assessment, participation, decision making and follow-up and coordination of environmental assessment.

The proposed issues, discussion items, and recommendations are subject to the rights and interests of the First Nations and may not be construed so as to undermine any of their positions, demands, actions, or negotiations. The recommendations and comments presented herein may not be used outside the specific context of this review.

The CEAA review is at the core of the federal Review of environmental and regulatory processes including the NEB modernization, the *Navigation Protection Act* and the *Fisheries Act*. The division of the Review into four components studied separately by committees observing different deadlines poses significant barriers to the adoption of an integrated approach. The elements referred to in this brief apply to the environmental assessment processes specific to the previous 3 components. More specific information about these three environmental and regulatory processes can be found in the briefs that have been or will be submitted to the other committees in charge of their respective reviews. We encourage the Expert Panel in charge of the CEAA review to consult and take into account the conclusions of these other reviews.

FIRST NATIONS RIGHTS

The First Nations never ceded their Aboriginal rights, including Aboriginal title. These rights have not been extinguished. On the contrary, their existence is confirmed by section 35 of the *Constitution Act, 1982*. Since then, a number of judgments have reinforced, clarified, and guaranteed the rights of the First Nations. By virtue of the existence and recognition of these rights, the Crown has the obligation to consult and accommodate the First Nations where it is contemplating making decisions or taking measures that may have negative impacts on Aboriginal rights or treaty rights, whether established or asserted.

The First Nations' rights are also recognized internationally by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),[1] the principles of which Canada has agreed to implement. Article 32 of UNDRIP stipulates that "indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources."

Therefore, by virtue of their status, the First Nations possess specific rights to their territories and resources. The First Nations interpret their relations with the different levels of Canadian government with reference to these rights and interests.

It is the will of the First Nations that the amendments made to the CEAA confirm the First Nations' rights to be:

- consulted separately;
- included upstream and given genuine consideration as part of the process;
- be engaged as partners in all decision-making processes relating to the use of the territory and its resources.

[1] http://www.un.org/esa/socdev/unpfii/documents/DRIPS_fr.pdf

DISTINCTIVE CULTURE

The First Nations of Quebec and Labrador possess a rich, millenarian culture and heritage.

TIES TO THE TERRITORY

The First Nations maintain a unique bond with the territory. This privileged bond with Mother Earth transcends the mere desire for sound management of resources. The relationship with the territory is a central element of First Nations' identity and must be protected and enhanced. The development and exploitation of natural resources and the territory have the potential to impede the First Nations' occupation and use of the territory, and to create a loss of bearings as well as their capacity to exercise their rights and culture upon it.

ECOSYSTEM CONCEPT

The First Nations have developed ways of acting, thinking, and doing that are designed to secure a balance between them and their environment. Their use of lands and resources is based on a set of resources that are in turn based on extensive ecosystems (the ecosystems that sustain fishing, trapping, hunting, etc.). No development should be carried out to the detriment of other resources that make up these ecosystems.

IMPACT OF ECOSYSTEM CONTAMINATION

For the First Nations, when an animal is killed, the entire animal is used (consumption of offal, tanning of the hide, making clothing, use of bones to make tools). To waste the animal could be perceived as a lack of respect for the life that it gave. When the health of animals on the territory is affected by development, the First Nations are the first to be affected. Contaminated offal, lowered reproductive success (decline of resources on the territory), and the development of cancer and deformities (decline in the health of animals on the territory) are only some examples of the impacts of ecosystem contamination.

VALUES

The features of the territory valued by the First Nations are often different from what is valued by the larger society. Thus, the *public interest,* a justification regularly put forward for government decisions, is not always compatible with First Nations realities, interests, and rights. The First Nations may at times stand in opposition to the different levels of government in Canada based on questions of values.

IMPORTANCE OF PLACE

Place has considerable importance for the First Nations, whether for social, cultural, spiritual, or ceremonial reasons or due to the traditional, familial, or historical use of a site. The territory is the ground on which culture and values are handed down. Place is important, and it is unacceptable to simply move a camp or significantly affect a site of practice.

FUTURE GENERATIONS

The First Nations support development in certain circumstances, but not at any cost to the territory because they do not consider the territory merely as an exploitable resource. When the time comes for development projects to be built, it is imperative to think of potential impacts on the next seven generations that will depend upon the territory to support their way of life.

FRAMEWORK OF ENVIRONMENTAL ASSESSMENT

CHANGING THE GOAL OF ENVIRONMENTAL ASSESSMENT

The goal of environmental assessment should be to ensure the preservation of the environment and all its components. Future generations have the right to inherit a healthy environment.

- **The current goal of environmental assessment, to mitigate the negative environmental impacts of a project, should be replaced by a goal of sustainability.**
- **First Nations rights should be included as a guiding principle of the environmental assessment process.**

ECOSYSTEM CONCEPT CENTRAL TO ENVIRONMENTAL ASSESSMENT

The word "ecosystem" does not appear in the CEAA. In the existing system, an attempt is made to depict the host environment as a collection of separate components. For example, impact studies present data on fish and plant species but do not indicate how these things may be impacted horizontally. The interactions between components of the environment and between different ecosystems must also be assessed.

It is important that a project not be carried out to the detriment of other resources in the environment. If other habitats or ecosystems are destroyed or disturbed, the cost of replacement or restoration is likely to greatly outstrip the jobs created and the profits generated.

- **An adequate, representative definition of the term "ecosystem" should be included in the CEAA.**
- **A section of the environmental impact study should group the components of the environment into ecosystems and define the interconnections between them.**
- **The interactions between different ecosystems must be documented.**
- **In the impact assessment for a project, the sum of all the components is important.**

ECONOMIC ASPECTS OF ENVIRONMENTAL ASSESSMENT

No project should be carried out to the detriment of the environment. The value of the environmental services rendered by an ecosystem or habitat must be taken into account as part of the decision-making process.

- **Economic development should never take place to the detriment of preserving a healthy living environment for the First Nations.**
- **The physical and social environment must first be assessed before going on to assess the economic development potential.**

TIME-SENSITIVITY OF APPROVALS

After the environmental assessment process is completed and all approvals have been obtained, it sometimes happens that certain developers delay the commencement of their project. There have been cases where projects approved decades earlier are begun without any review or updating of the environmental assessment. Technical knowledge and environmental standards evolve, yet previously-approved projects appear to be exempt from any requirement to conform to current best industry practices.

- **Approvals must stipulate deadlines by which the project must be carried out.**
- **There should be an updating mechanism for approved projects that are not commenced prior to the expiration of the approval.**

PLANNING OF ENVIRONMENTAL ASSESSMENT

CONSISTENCY OF DEVELOPMENT

The First Nations are not opposed to development, but they do want the government to guarantee the continuity and consistency of the different projects taking place on a territory.

- **Several issues (e.g., Strategic environmental assessments, development planning, cumulative impacts) must be addressed at a higher level than what is currently allowed by environmental assessment processes.**
- **Decisions must consider and respect the vision of First Nations regarding the development of the territory.**
- **The government must have an overall long-term vision of development so that it can properly evaluate the impacts of a project. Consistency must be ensured between the actions of the federal government and those of the provincial and regional governments.**

STRATEGIC DEVELOPMENT FRAMEWORK

Changes in the use of a territory caused by the implementation of a project have impacts on the First Nations' use and occupation of the territory and hence on their capacity to exercise their rights. All development on a territory must be covered by a strategic development framework jointly devised with the First Nations and the federal and provincial governments.

- **Permanent sectoral roundtables with First Nations participation must be formed. The terms of reference of these roundtables must be drafted in collaboration with the First Nations.**
- **Strategic environmental assessments (SEA) should be conducted, transparently and on a large scale, for each development sector as a guide to future decisions. Such SEA are important for the two orders of government, allowing them to coordinate development and provide for genuine assessment of the cumulative impacts of all new projects.**
- **The SEA should be used to guide decisions about the development.**

COORDINATION OF DEVELOPMENT WITH FIRST NATIONS TERRITORIAL PLANNING

The First Nations have their own territorial planning processes, which are designed, among other things, to develop and promote the occupation, use, and accessibility of quality sites for the practice of traditional activities on the territory.

- **Dialogue must be initiated upstream of the environmental assessment process between the governments (federal and provincial) and the First Nations with a view to harmonizing territorial development.**

CONDUCT OF ENVIRONMENTAL ASSESSMENT

UPSTREAM IDENTIFICATION OF AFFECTED FIRST NATIONS

To ensure that the First Nations are able to participate meaningfully in the process, it is essential that developers ascertain and identify, at the project design stage, any communities that will potentially be affected by the implementation of the project. This includes potential impacts to traditional territory located outside of reserves. All communities potentially affected by either the direct or the residual impacts of the project must be identified upstream of the process.

SEPARATE CONSULTATION WITH FIRST NATIONS

The current environmental assessment process treats members of non-treaty First Nations as ordinary participants with the same status as members of the general public. The CEAA does not give special consideration to the First Nations.

The current environmental assessment process is ill-suited to First Nations realities.

- The First Nations do not always have the time needed to consult their members, populations, elders, or guardians of the territory within the prescribed deadlines.
- The communities lack the qualified technical resources needed to participate adequately in all the consultations that may affect them.
- Communities receive up to 300 consultation requests a year, related to territory and resources. Since the consultation process is ill-suited to the needs of the First Nations, this represents considerable workload for them.
- Characterization studies and studies assessing impact on the First Nations do not always faithfully reflect their use and occupation of the territory.

The government must make legislative commitments aiming to provide recognition for the distinctness of First Nations activities and practices.

- **A chapter should be added to the CEAA to specifically address the recognition of First Nations rights and their presence on the whole territory.**
- **The Crown must commit to tabling a separate consultation policy for the First Nations in connection with the environmental assessment process. This policy must, in particular, provide for the drafting of consultation protocols. This commitment must appear in the text of the Act.**
- **This separate consultation policy must include the First Nations' right to be informed upstream, taken into account, and genuinely involved in the decision-making process.**
- **The CEAA must lay down principles, frameworks, and guidelines determining the content of the feedback to be given to the First Nations. These guidelines must also be included in the separate consultation policy for the First Nations.**
- **The government must be willing to make fundamental changes to the environmental assessment process and not merely make minor amendments to the existing process.**

FUNDING

The available funding does not, at present, allow for meaningful First Nations participation in the environmental assessment process:

- The funding comes at a stage when the project review has already begun (funding application, comments on guidelines, etc.);
- Funding is not retroactive.

When communities lack adequate financial support, they are unable to build and retain a qualified team upon which they can rely for the purposes of environmental assessment. The maintenance of a permanent team that can stay on top of the various files will allow the communities to have an integrated, long-term vision of development.

- **The separate consultation process for the First Nations must include adequate funding for First Nations activities.**
- **Funding agreements must be retroactive, signed upstream of the process, and cover the whole environmental assessment process, from project description to follow-up.**
- **Recurrent funding should be granted to the communities so that they can establish and maintain a multidisciplinary team related to environmental assessment consultations.**
- **Funding must be adjusted as a function of project complexity, with additional funding available where the communities need access to specialized consultants (engineers, geologists, biologists, anthropologists, etc.).**

TIME PERIODS

The Act prescribes specific moments for consultation, as well as specific time periods in which to submit comments or concerns. The current environmental assessment process treats the First Nations as participants on an equal footing with rest of the Canadian population. The time periods allotted for the process ignore the fact that the First Nations are governments that must also conduct their own internal consultation and decision-making processes. The council must explain the project to the members, reach the guardians of the territory, and gather and compile concerns. This consultation process takes time, even before considering linguistic issues.

- **The separate consultation process must include a time periods commensurate with the realities of the First Nations.**
- **The deadlines must be adapted to the internal processes but without undermining or delaying the project's environmental assessment process.**

ADDITION OF NEW SECTIONS TO THE CEAA

The current Canadian government must adopt specific measures so that any change of government does not have negative impacts on the recognition of First Nations rights.

- **A separate chapter dealing specifically with the First Nations, addressing the recognition of their rights, and taking into account the Aboriginal presence on the whole territory must be added to the CEAA.**
- **The government must commit to implementing a separate consultation policy for the First Nations. This commitment must appear in the Act.**
- **The distinctive culture and rights of First Nation must be mentioned in this chapter.**

SEPARATE CHAPTER IN ENVIRONMENTAL IMPACT STUDIES

The First Nations evaluate environmental impact studies to make sure that the developer has satisfactorily described the project's impacts on existing land and resource use. The information is generally found dispersed throughout the document, and given that the First Nations generally represent a minority of the regional population, environmental impact studies appear to minimize the importance of the First Nations, and their interests are given short shrift in the resulting statement.

- **The First Nations' issues and concerns must be addressed specifically by the developers, with the need to include a specific chapter on the First Nations in all environmental impact studies. The Guidelines must require that such a separate chapter be included in every impact study.**
- **A separate summary dealing specifically with the interests of the First Nations must be produced as a schedule to the impact study.**

ENVIRONMENTAL ASSESSMENT PROCESS

The First Nations want to participate meaningfully, as partners, in the environmental assessment process. The current environmental assessment process does not take into account the challenges facing the communities: lack of funding, lack of qualified technical resources, lack of consideration for First Nations' internal decision-making process (consultation of community members, elders, advisory committees, etc.).

DRAFTING OF MINISTERIAL GUIDELINES

Ministerial guidelines for projects are laid down in advance by government departments. In the existing processes, impacts on First Nations are assessed as a function of project type rather than project site.

- **The First Nations should participate in the drafting and revision of sectoral guidelines.**
- **General sector-based guidelines should be revised on a regular basis.**
- **A general chapter dealing specifically with Aboriginal peoples should be included in all guidelines.**
- **The obligation to specifically address First Nations concerns and to compile all corresponding impacts in a separate chapter of the environmental impact study should appear in the guidelines.**

CONSULTATION OF FIRST NATIONS UPSTREAM OF ENVIRONMENTAL ASSESSMENT

(Description, First Nations participation in description of designated project, separate section in project description)

The developer must provide the Agency with a description of the designated project that includes the information set out in the *Prescribed Information for the Description of a Designated Project Regulations*. Currently, information related to the First Nations consultation shall only be provided if they are "available and appropriate". This information must be required.

- **The Prescribed Information for the Description of a Designated Project Regulations must include the obligation to initiate contact with the affected communities.**
- **A "project description" document must be considered incomplete if the developer fails to provide an accounting of its initial contacts with the communities concerned.**
- **For the purposes of making initial contact, a complete list of First Nations potentially affected by the project or any of its components must be produced. The developer must adopt a broad, rather than a narrow vision of the communities to be contacted.**

PROJECTS SUBJECT TO ASSESSMENT

Making projects subject to assessment solely based on their predicted impacts causes much uncertainty and renders the process far too complex.

It is important that developers be subjected to assessment, and that a checklist (appendix) exists to guide the procedure. However, certain thresholds could be envisaged, particularly in the case of expansion of existing facilities.

Projects not subject to environmental assessment but requiring certain types of approval could still have impacts on First Nations. First Nations must be consulted wherever such approvals are necessary.

- **Amendments to the *Navigable Waters Protection Act* and the *Fisheries Act* have seriously restricted the types of situations that trigger the various levels of environmental assessment and diluted the environmental assessment process.**
- **The presumption that assessment is required for any subsequent modification of a project must be restored. Approvals should be issued on the basis of the project's potential impacts on the environment rather than on a list of predefined criteria.**
- **The CEAA must include a section dealing with the procedure for consulting the First Nations and assessing the impacts of a project not subject to assessment. Mechanisms must be created to limit the impacts on First Nations rights.**

ASSESSMENT OF IMPACTS ON FIRST NATIONS

The impacts of a project on the First Nations are not assessed with reference to a number of criteria, such as the extent of affected hunting areas, alterations to ecosystems that support fishing, or the presence of spawning grounds. The conclusion as to the impacts of the project on the First Nations is often limited to a general conclusion in which no impact is predicted and no breakdown is provided.

Assessment of a project's impact on the use of lands and resources for traditional purposes must consider both the use and the resources. The resources supporting traditional ways of life are based on extensive ecosystems existing and functioning on a landscape scale. When the predicted impacts are divided up, the impacts on the First Nations may be considered to be low even though the affected First Nations may consider them important.

- **The impact study prepared by the developer should address the impacts on the First Nations in a separate chapter, including an assessment of the project's impacts on the use of lands and resources for traditional purposes.**
- **An obligation to separately assess the project's impacts on the First Nations, as well as an obligation to consider all Aboriginal aspects in a separate chapter of the environmental impact study, must appear in the environmental assessment guidelines.**
- **Assessment of impact on the First Nations must be done in collaboration with the First Nations.**
- **It must be recognized that the First Nations have a legitimate right to make their own identification of valued environmental components.**
- **Assessment of the project's impact on the First Nations should be excluded from the 365-day period. It should be under the responsibility of the Canadian Environmental**

Assessment Agency (hereinafter, the "Agency") and conducted in concert with all government departments concerned.

- **Traditional knowledge must be considered throughout the environmental assessment process on an equal-footing to Western Science.**

CUMULATIVE AND RESIDUAL IMPACTS

The question of cumulative impacts is unavoidable; a project is rarely carried out in isolation. The responsibility to identify the cumulative or residual impacts of a project should rest with the government. Developers may not be aware of other development projects in the area, whereas the federal and provincial governments possess this information. In the current process, the developer assesses the impacts of its project at the local level only. The developer's starting point is the set of impacts it finds to be significant.

Cumulative impacts are an important factor affecting the First Nations' use and occupation of the territory. It is difficult to ascertain the acceptability level when impacts are all assessed locally. Many factors having direct impacts on the First Nations are under provincial jurisdiction. The responsibilities are shared between the federal and provincial levels, but the impacts are never combined and assessed as a whole.

- **The government must widen its vision of development and consider the long-term impacts of projects before they are put into effect.**
- **Each project's contribution should be contemplated within a wide-angle view of development in which all impacts are grouped, assessed, and considered.**
- **Historical data must be incorporated into the cumulative impact assessment.**
- **There is a difference between traditional knowledge (past) and Aboriginal knowledge (present); it is important that cumulative impact assessment also consider these two factors.**
- **Several departments should be involved in impact assessment, at both the national and the regional levels.**

PARTICIPATION IN CHARACTERIZATION STUDIES OF LAND OCCUPATION AND USE

Characterization studies and studies assessing impacts on First Nations do not always faithfully reflect the use and occupation of the territory.

- **Characterization studies and studies assessing impacts on First Nations must be done in collaboration with the First Nations.**
- **It must be recognized that the First Nations have a legitimate right to make their own identification of land occupation and use.**
- **The First Nations must be informed upstream, receive all documentation, and have the time necessary to understand the project and its impacts on culture and traditional practices.**
- **Developers must be encouraged to provide funding to allow the communities themselves to characterize the occupation of the territory and document the impacts.**

DECISION MAKING AND FOLLOW-UP

MINISTER'S DECISION

Projects having significant negative consequences for the environment may be authorized by political decision. This is a major problem since some industries wield considerable lobbying power.

- **The Crown guarantees the involvement of the First Nations in decision-making processes.**
- **The First Nations must be meaningfully consulted on the minister's pending decision and on the conditions and reasons of the decision. At present, the First Nations are only informed of the decision.**
- **The separate First Nations consultation policy must provide for consultation of the First Nations on the decision to be rendered by the minister.**
- **The minister must have in hand an accounting of all consultations performed with the First Nations, so as to ensure that the decision includes the consideration of all concerns raised.**

FEEDBACK

The government must provide feedback to the First Nations on the consultations (projects, decision, etc.). The stronger the opposition of a First Nation, the more important it is for the feedback to be solid and well-documented.

- **The content of feedback must be guided by principles, frameworks, and guidelines. These guidelines must be included in the separate consultation policy for the First Nations.**

FOLLOW-UP

It is important that the First Nations have an opportunity to work upstream of the process, but also downstream for the purposes of project follow-up.

- **Recurrent funding must be granted to the communities to allow them to follow up on projects.**

ENVIRONMENTAL ASSESSMENT REPORT

- **The First Nations must be consulted on the final version of the environmental assessment report.**
- **The First Nations should have made privy to any recommendations on Aboriginal issues made by the Agency to the minister to aid his decision.**

COORDINATION OF ENVIRONMENTAL ASSESSMENT

It is important to clearly delineate the responsibilities resting with the developer of a project, as opposed to the obligations of the governments, with respect to the First Nations and to impact assessment.

ROLE OF THE CROWN

- **The Crown must commit to developing a separate consultation policy for the First Nations as a framework for protocols and practices relating to consultation with the First Nations.**
- **This First Nations consultation policy must be consistent with Canada's commitments under the UNDRIP and must be based on clearly articulated sections and paragraphs of the Act.**

ROLE OF THE AGENCY

- **The Agency, as the government body possessing the relevant environmental expertise, should have the opportunity to influence and participate in the decision-making process.**

ROLE OF THE DEVELOPER

- **Developers should be responsible for initiating contact with the First Nations, for information exchange purposes, upstream of the environmental assessment process.**
- **Developers should be bound to comply with clear guidelines as regards the First Nations.**

PROVINCIAL VERSUS FEDERAL GOVERNMENT

- **Coordination must be improved between the provincial and federal governments in order to incorporate and take into consideration First Nations issues.**

ABORIGINAL CONSIDERATIONS

In May 2016, the federal Minister of Indigenous and Northern Affairs Canada announced the Government of Canada's commitment to adopting and implementing the UNDRIP. Furthermore, in his spring 2016 address, the Minister of Aboriginal Affairs and Northern Development expressly confirmed that Canada will recognize the concept of "free, prior, and informed consent" contained in the UNDRIP.

It is the intent of the First Nations to ensure that amendments made to the environmental assessment process are conducive to meeting the goals of the UNDRIP and are based on the recognition of rights, respect, co-operation and partnership[2].

- Indigenous rights must be a guiding principle of the CEAA and the processes resulting from it;
- indigenous jurisdictions must be respected and integrated in the decision-making;
- the different assessment levels must be integrated (regional, local, etc.);
- the cumulative impacts and their effects on First Nations must be assessed;
- a significant place throughout the entire environmental assessment process must be given to First Nations:
    - The First Nations must have an opportunity for upstream involvement prior to filing of the project description by the developer.
    - The First Nations must have the opportunity to participate meaningfully in the process, which means they must be given the resources and funding necessary to do so.
    - The First Nations must be afforded a separate consultation process.
    - The First Nations must have the opportunity to influence the decision-making process.
- Traditional knowledge needs to be considered throughout the environmental assessment process on an equal-footing to Western Science.

The First Nations can't present an exhaustive statement, within the framework of the Review, on a suitable way to incorporate the principles of the UNDRIP into the federal environmental assessment process.

We believe that this matter needs to be addressed separately, within the framework of a special consultation. Since the incorporation and application of the concepts contained in the UNDRIP will entail significant impacts calling for political, legal, and technical discussions, the current process does not serve to elaborate on this matter.

[2] *The Honourable Carolyn Benett, Minister of Indigenous and Northern Affairs.*